

August 27, 2013

Public Comments Processing  
Attn: FWS-R6-ES-2012-0108  
Division of Policy and Directives Management  
United States Fish and Wildlife Service  
4401 N. Fairfax Drive, MS 2042-PDM  
Arlington, VA 22203

Sent Via Certified Mail

To Whom It May Concern:

The record of the evidence presented herein, along with the comments from other local interested parties, demonstrates that the perceived threats described in the Proposed Rule (Part II) do not warrant the listing of the Gunnison Sage-grouse, and the Critical Habitat determination in the Proposed Rule (Part III) is overestimated.

Provided under this cover letter, cited as Enclosure 1, are comments from the City of Gunnison, Colorado, for the Proposed Rules (Parts II and III) to list the Gunnison Sage Grouse Species and its Critical Habitat as Endangered under the Endangered Species Act.

The City of Gunnison believes these Proposed Rules (Parts II and III) are the most significant issue facing Gunnison County in decades, and we urge the Fish and Wildlife Service to uphold the values stated in its mission (FWS National Policy #96-02) while processing the determination of these Proposed Rules.

Questions or inquiries regarding these comments may be directed to Mr. Ken Coleman (City Manager) or Mr. Steven Westbay (Community Development Director).

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Thank you for full consideration of the facts.

Sincerely,

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Robert Drexel, Mayor

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Stu Ferguson, Mayor Pro-Tem

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Carolyn Riggs, Councilor

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Anne Steinbeck, Councilor

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Richard Hagan, Councilor

ENCLOSURE:

CC: Mr. Mark Udall, US Senator  
Mr. Michael Bennet, US Senator  
Mr. Orrin G. Hatch, US Senator  
Mr. Mike Lee, US Senator  
Mr. Scott Tipton, US Representative  
Mr. Jason Chaffetz, US Representative  
Mr. Jim Matheson, US Representative  
Mr. Ken Salazar, Secretary, Department of Interior  
Mr. John Hickenlooper, Governor, State of Colorado  
Ms. Gail Schwartz, State Senator  
Mr. Mike McLachlan, State House Representative  
Gunnison Board of County Commissioners  
Mr. Richard Cables, Director of Colorado Division of Fish and Wildlife  
Upper Gunnison River Water Conservation District  
Ms. Susan Linner, FWS Colorado Field Supervisor  
Ms. Patty Gelatt, FWS Western Colorado Supervisor

## **CITY OF GUNNISON COMMENTS – GUNNISON SAGE-GROUSE PROPOSED RULE AUGUST 27, 2013**

### **INTRODUCTION**

These City of Gunnison comments are being submitted to the United States Fish and Wildlife Service (FWS) in reference to the Proposed Rule (Parts II and III, *Federal Register*, January 11, 2013) for the listing of the Gunnison Sage-grouse (GUSG) and its Critical Habitat as Endangered, under the *Endangered Species Act*. The City of Gunnison opposes the Proposed Rule (Part II and III) conclusions to list the GUSG and the related designation of proposed Critical Habitat under the *Endangered Species Act*. Significant elements of these City of Gunnison comments focus on the proposed Rule, Part III for the designation of Critical Habitat. The following is a summary of the City of Gunnison's issues with the Proposed Rule that are in addition to comments by the City submitted to the FWS on March 26, 2013.

### **HISTORIC and CURRENT DISTRIBUTION**

As noted in written comments to the FWS regarding the Proposed Rule submitted by the Colorado Division of Parks and Wildlife, (CDPW, Director Cables, April 13, 2013), historic GUSG distribution is overestimated as a whole. Furthermore, the historic range map in the proposal includes extensive areas of non-habitat across the landscape, and overestimates impacts of the inferred habitat loss and fragmentation.

The FWS determination of Critical Habitat relies on studies documenting the historic GUSG distribution. The Proposed Rule incorporates data from Schroeder, et al., (2004), for historical habitat delineations. However, the Schroeder mapped scale is not comparable to approaches used to delineate current occupied range. Schroeder, et al., (2004:366) reported that the maps were “...*transferred to 1:2,000,000 scale U.S. Geological Survey maps along with a hand-drawn approximation of potential (pre-settlement distribution) habitat.*” Therefore, the historic distribution of GUSG used by the FWS in the Proposed Rule (Parts II and III) is significantly overestimated.

As stated by the CDPW letter (April 13, 2013) occupied habitat was delineated at a much finer scale (often finer than 1:100,000 scale), and the historic range map in the Proposed Rule (Part III) includes extensive areas of non-habitat across the landscape, and overestimates impacts of the inferred habitat loss and fragmentation. Specifically, the FWS cites scientific literature from Wisdom, et al., (2011) but the results and interpretations from Wisdom, et al., are biased because the base map data of historic habitat is inaccurate.

### **CRITICAL HABITAT DESIGNATION**

The Proposed Rule (Part III, Pg. 2542, Column 1) states “...*we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the Species.*” The City Council believes the inclusion of vast areas as Critical Habitat is inappropriate because of significant inaccuracies in mapped data used by the research literature cited by FWS.

The Proposed Rule (Part III, Pg. 2543, Column 3) states that “...*Individual Gunnison sage-grouse documented to move more than 56.3 Km to wintering areas in the Gunnison Basin....these movements demonstrate the large scale annual habitat...we identify sagebrush plant communities of sufficient size and configuration to encompass all seasonal habitat, including areas used to move between seasonal habitat, for a given population of Gunnison sage grouse to be a physical or biological feature essential to the conservation of this species.*” These assumptions are not based on the best available scientific and commercial data available.

According to the United States Geological Survey (USGS) descriptions, GUSG habitat is located within portions of the Colorado Plateau Geological Province and the Rocky Mountain Geological Province (United States Geological Survey). The upper Gunnison Basin is a high-elevation valley situated at the eastern edge of the Colorado Plateau. The *Proposed Rule* (January 11, 2013) describes the Gunnison Basin as an “intermontane” system.

This interface between physiographic regions results in strongly differentiated landscapes and biological life zones within the proposed critical habitat area.<sup>1</sup> However, these phenomena are not discussed in the Proposed Rule (Parts II and III).

Rimmed by some of the highest ranges of the southern Rocky Mountains, the only outlet lower than 10,000 feet elevation is to the west where the Gunnison River passes through the Black Canyon of the Gunnison. This narrow gorge appears to act as a filter for the movement of lower-elevation species into and out of the basin.

Ecologically, the flora and fauna in the Upper Gunnison Basin appear to be depauperate in taxa, and the region has been recognized for its unique biogeographic characteristics.<sup>2</sup> The biotic communities of the Basin include sagebrush-steppe, which is particularly prevalent from 7,500 feet to 9,000 feet elevation.

The most significant research to date addressing the species demography was published in the Ph.D. Dissertation titled: *Gunnison Sage Grouse Demography and Conservation* (May Jane Davis, Colorado State University, Summer 2012). The following statement is provided in the dissertation:

*Due to the inherent difference in population sizes and the fact the populations may be experiencing different ecological pressures, the population dynamics of these small populations may be considerably different from the GB [Gunnison Basin] population.*

*I found strong evidence for a difference between the two populations (Gunnison Basin and San Miguel); which suggests that management plans for these two populations should be developed separately to address the dynamics specific to each population.*

*GUSG are distributed into seven isolated populations. One population, Gunnison Basin (GB), comprises 85-90% of all GUSG and the other six populations are estimated to range in size from 20 to 170 individuals (Kathy Griffin, Colorado Parks and Wildlife (CPW), Grouse Coordinator, pers. comm.). Due to the inherent small sizes of these other populations and the fact they have been declining in recent years, the population dynamics of these small populations may be very different from the GB population.*

*The variability in previous work on GRSG suggests selection pressures may be acting on each population differently. Johnson, et al., (2010) determined that ideal management of a species was different between populations when variability existed between the vital rates of those populations. This concept emphasizes the need for species-specific demographic rates, but also suggests population-level demographic rates are necessary to implement optimal management strategies. I analyzed data from two different populations. These populations are different in the vegetation species composition; range*

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<sup>1</sup> agc. army military publications; [www.army.mil/publications](http://www.army.mil/publications); University of Northern Arizona CP-LUHNA web pages.

<sup>2</sup> John Sowell, et al., University of Northern Arizona CP-LUHNA web pages.

*of elevations (2,300-2,900 in GB and 1,900-2,800 in SM), soil properties, and population size (Gunnison Sage-grouse Rangewide Steering Committee 2005).*

The following quotes were from *Population Genetics of the Gunnison Sage Grouse: Implications for Management* (Sara, J. Oyler-McCance, et. al):

*Pairwise population FST values showed congruent patterns of population genetic structure in both the microsatellite and the mitochondrial data suggesting that all populations are genetically discrete units and can be considered distinct populations with the exception of Gunnison and Curecanti, which are closely linked geographically. STRUCTURE analysis further substantiated our finding of a high degree of population structure and low amounts of gene flow by defining 6 populations, yet Curecanti and Gunnison were very closely related. Further, FST calculated among all 6 Gunnison sage-grouse populations was significantly higher than it was for greater sage-grouse. This is likely due to reduced gene flow among the 6 populations of Gunnison sage-grouse in conjunction with increased genetic drift that is characteristic of small populations (Page 635).*

**Effects of Determination – Critical Habitat Designation.** The FWS incorporated unfounded assumptions in the identification of areas used to move between seasonal habitats for a given population of Gunnison Sage-grouse to be a physical or biological feature essential to the conservation of this species. Furthermore, the Proposed Rule (Part III) includes extensive areas of non-habitat across the landscape, and overestimates impacts of the inferred habitat loss and fragmentation. Specifically, the FWS cites scientific literature from Wisdom, et al., (2011), but the results and interpretations from Wisdom, et al., are biased because the base map data of historic habitat is inaccurate.

### **CRITICAL HABITAT MAPPING**

GIS metadata files developed by the FWS do not cite the raster coverage data sets used to delineate Critical Habitat depicted on the Index Maps. The FWS included vacant or unknown habitat and potentially suitable habitat from the Gunnison Sage-grouse Rangewide Steering Committee (GSRSC) into the definition of Critical Habitat. Numerous areas designated as Critical Habitat by FWS are in error and these errors raise concern that the FWS has not followed the direction of the ESA to designate critical habitat “... to the extent prudent and determinable.” Specifically, pursuant to 50 CFR 424.12(a) (1) designation of critical habitat based on inaccurate data would not be beneficial to the species.

The most significant delineation error occurs in those areas of Critical Habitat designated that lie outside of the Occupied Habitat as designated in the *Gunnison Sage-grouse Rangewide Conservation Plan*. As noted in the Proposed Rule (Part III, Pg. 2546, column 1), “...*The unoccupied sagebrush plant communities that are proposed for designation were all likely historically occupied and can allow for the expansion of the species as well as facilitate movements among populations.*” First, the historical range of sage grouse is overestimated. Second, Critical Habitat areas outside of Occupied Habitat were based on USGS GAP Land Coverage digital models with relatively low pixel resolution (30 meters x 30 meters) and using such a data for this type of delineation must be accompanied by a comprehensive “ground-truth” verification process. “Primary Constituents” as identified by the FWS in the Proposed Rule (Part III) do not exist in much of the landscape designated as Critical Habitat. The Colorado Department of Parks and Wildlife process to delineate Occupied Habitat was based on similar raster data sets, but the process included input from biologists with extensive knowledge of the rangelands, and ground truth processing. There is no indication in the Proposed Rule (Part III) that a ground truth verification process was conducted by the FWS in its determination of the proposed Critical Habitat. In fact, based on the

delineation around the city boundary, it is unlikely that the FWS conducted a ground truth process for its determination of Critical Habitat.

In fall 2012 Gunnison County developed a GIS data set for habitat assessment which was based on NRCS soils data. The County used NRCS soils data because the accuracy was much more reliable than the USGS GAP Coverage data. The City Council believes that the resolution of USGS GAP Coverage data is far too low for providing accurate delineation of Critical Habitat.

One specific example of such error is the FWS using the administrative boundary of Dolores County, Colorado to delineate the southern border of Critical Habitat. Obviously Primary Constituent Elements (breeding habitat, summer/fall habitat, winter habitat and mesic habitat) cited in the FWS methodology for determining critical habitat do not follow political boundaries.

Significant delineation errors are also found around the incorporated city boundary. The FWS has designated the local City Market, Gunnison Valley Hospital, Gunnison Community School and a major portion of the airport air-side operations area as critical habitat. Obviously these urbanized areas do not contain Primary Constituent Elements, and yet they are designated as Critical Habitat by the Proposed Rule.



The Proposed Rule also designates urbanized areas outside of, but adjacent to the city boundary. These are historic urbanized areas provided urban services under inter-governmental agreements between the City and County. Existing and future developed areas around the city are important because they concentrate the human footprint and help to minimize the amount sprawl development of adjacent hinterlands.

**Effects of Determination – Critical Habitat Mapping.** Historical range of sage grouse is overestimated and reliance upon the cited literature by the FWS in the determination of Critical Habitat is in error. Critical Habitat areas outside of Occupied Habitat were based on USGS GAP Land Coverage digital models with relatively low pixel resolution (30 meters x 30 meters) and using such a data for this type of delineation of Critical Habitat was not accompanied by a comprehensive “ground-truth” verification process. “Primary Constituents” as identified by the FWS in the Proposed Rule (Part III) do not exist in much of the landscape designated Critical Habitat. The best available data for habitat assessment is the Gunnison County GIS model, which is based on NRCS soil mapping, not the USGS GAP Land Coverage data. It is the City’s position that the Proposed Rule (Part III) delineation of Critical Habitat is erroneous and the lack of ground-truth verification is a direct contradiction to the FWS policies for *Scientific Integrity and Scholarly Conduct Policy* (212 FW7).

## EXCLUSIONS

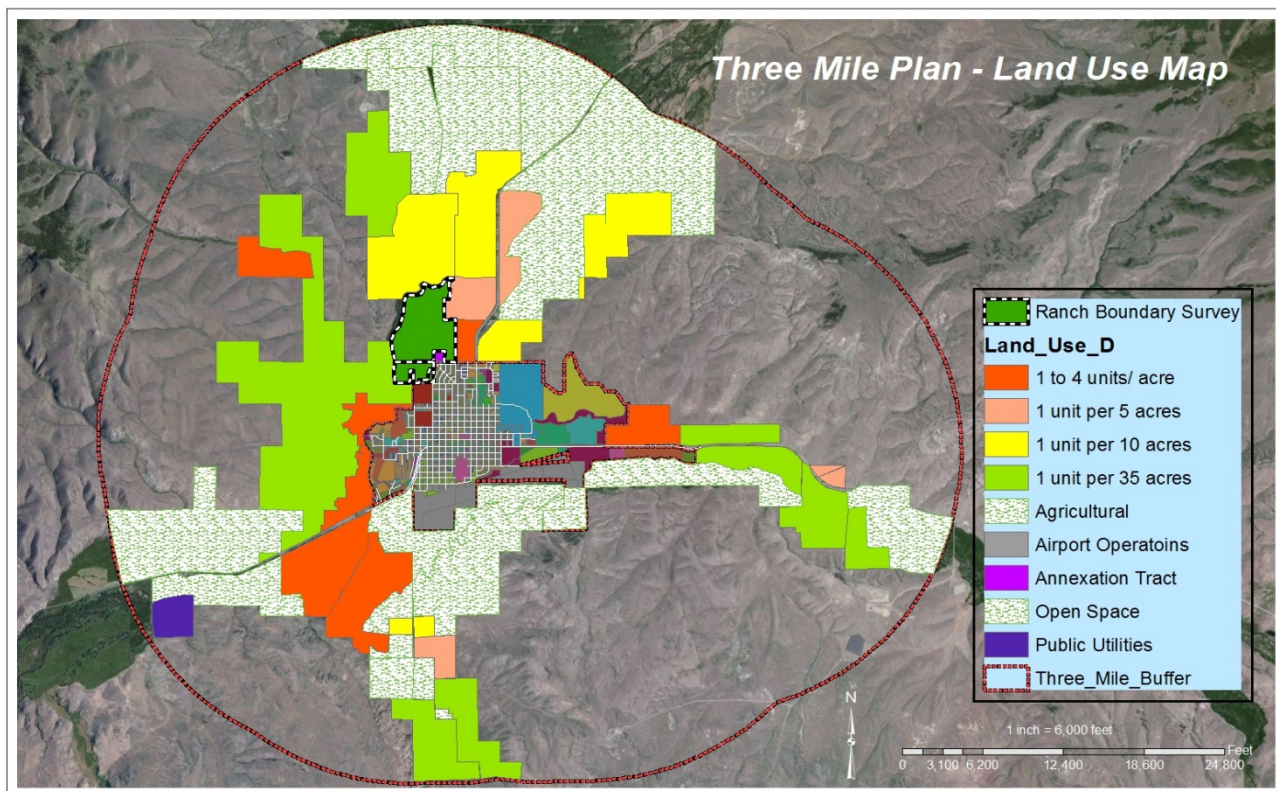
As noted in the Proposed Rule (Part III, pg. 2558) “...the Secretary may exclude an area critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat...” The City believes that listing the species and designating Critical Habitat is not warranted because the perceived threats, as noted in the rule, do not exist; however, if a decision to list is made by the FWS, the incorporated city boundaries and certain land areas within the City of Gunnison Three Mile Boundary should be excluded from the Critical Habitat designation. Specifically,



comprehensive planning efforts by the City of Gunnison and Gunnison County have directed development to a concentrated area, and thus reduced the amount of sprawling development patterns that cause the loss of habitat.

If listing of the Gunnison Sage-grouse occurs, the decision should exclude Critical Habitat designation within the incorporated boundaries of the City of Gunnison. While the reason for this proposed exclusion is based sustainable planning principals to focus growth in concentrated areas, it is also based on the fact that voluntary mitigation was included as part of the annexation of Gunnison Rising, which encompasses about 87 percent of the undeveloped land area in the city. This mitigation included the deeding 160 acres of Occupied Habitat to the State of Colorado, and also closing-out two cattle allotment permits in Occupied Habitat on BLM lands.

As noted, excluding the city boundaries and surrounding areas from Critical Habitat will provide an incentive for development to occur in a concentrated area that is able to receive urban services. Additionally, there are urbanized land uses outside of, but adjacent to the City boundary that are either fully developed or in the process of being developed. These unincorporated land uses adjacent to the City should also be excluded from designation as Critical Habitat. Specifically, those unincorporated areas in the bottom-lands of the valley, and out of the sagebrush steppe should be excluded from Critical Habitat designation, if a decision to list the species as Threatened or Endangered occurs.



**Effects of Determination – Critical Habitat Exclusions.** Delineation of Critical Habitat within the incorporated boundaries of the City of Gunnison and surrounding urbanized lands adjacent to the city would be contrary and detrimental to the survival of the species. Specifically, the designation of Critical Habitat within and around the city will have a cause-effect relationship that will force development into the hinterlands of Occupied Habitat – in essence, the delineation of Critical Habitat in these urbanized

areas will contradict comprehensive planning policies of the City and County to focus growth and development in, and adjacent to, urban areas.

## REQUIRED DETERMINATIONS

As noted in the Proposed Rule (Part III, pg. 2559), the FWS will defer certain determinations regarding the *Regulatory Flexibility Act*; *Energy Supply, Distribution or Uses Executive Order 13211*; *Unfunded Mandate Reform Act*; and *Small Business Regulatory Act* until after the economic impact analysis for the proposed Rules (Part II and III) has been completed. These determinations will have a significant impact upon local, county and state jurisdictions as well as small businesses that would be negatively affected by a determination by the FWS to list the GUSG as either Threatened or Endangered.

It is imperative that the review process allow for adequate review and assessment of the economic impact analysis and subsequent “required determinations” that are being deferred by the FWS. The City Council disputes the assertion that pursuant to Executive Order 12866 and 13563 the FWS is in compliance with the mandate to “...*promote predictability, to reduce uncertainty and to use the best, most innovative and least burdensome tools for achieving regulatory ends.*” (Proposed Rule, Part III, Pg. 2559, Column 2). In fact, the best available scientific and commercial data clearly demonstrates that the population of the Gunnison Sage-grouse is stable and increasing; that the threats related to population growth, development, fencing, roads, and noxious weeds is overstated; and, the premise of “habitat fragmentation” as it is incorporated into the Proposed Rule (Part II and III) is contrary to the modern scientific interpretations of its definition (see *Encyclopedia of the Earth* - [www.eoearth.org/view/article/153225/](http://www.eoearth.org/view/article/153225/); *et AL*).

Under the *Regulatory and Flexibility Act* and the *Small Business Regulatory and Enforcement Fairness Act*, the FWS must publish a notice of rulemaking for any proposed or final rule, and it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations and small government jurisdictions). While the head of the agency may determine and certify that the rule will not have a significant economic impact, it is clear that in the case of the Gunnison Sage-grouse proposed listing that significant impact will occur to a substantial number of small entities across western Colorado and eastern Utah, and specific impacts upon the tourism and agriculture and the function of local government are anticipated.

**Private Development Economy.** Based on an assessment of Habitat Conservation Plans (HCP) that have been implemented across the nation, the costs for development of such plans can range for \$400,000 (Polk County, FL) to \$1.2 million (Santa Clara County CA). But, that is not the true expense of an HCP. The implementation of HCP can range from \$137 million (Edward, TX Aquifer, a seven year HCP) to \$660 million (Santa Clara, CA 50 year HCP). While a variety of funding sources are often available for developing and implementing such plans, the real burden falls upon local jurisdictions. If impact fees are used to fund such plans, the cost per acre ranges from \$6,500/acre (Williamson County, TX) to \$15,915/acre (Santa Clara CA).

Assuming the GUSG listing results in a development cost increase of \$10,000 per acre, and based on the Critical Habitat Mapping delineation within the city boundary, \$12.1 million in additional expenditures will be added to the cost of future development in the city. Local government will incur additional costs in the provision of critical services including, but not limited to, domestic water, sewer and electrical services. Such costs would significantly curtail future development within the city and would add to the pressure to develop outside the city limits.



Documentation from studies in Texas demonstrates that local property tax values are reduced between 30 and 40 percent as a result of listing decisions<sup>3</sup>. A 30 percent reduction in the property tax role of private property in the city will be significant, but it will be substantially more detrimental to County revenue sources.

**Agriculture Economy.** Based on employment data published by the State Demographer, 3.68 percent of the Gunnison County labor force is from agribusiness. In a public meeting hosted by the Gunnison Stock Growers Association (March 14, 2013) the following statement was provided by Mr. Lee Spann whose family has been ranching in the valley for four generations:

*Ranchers own three things: they own land, they own livestock and they own water. If we can't make a living with cattle because we can't run 'em [on public land], if we can't sell our land for development ... then what's left for us to sell. Water. I think you need to think about what the valley from here to Crested Butte would look like without water.*

Based on data published by Gunnison County there are 186 active ranch operations in the county—25 with annual profits of greater than \$100,000 per year. The US Census of Agriculture, (Table 1 Data Series) estimates that approximately 40,000 acres of real property in Gunnison County are irrigated. If listing under the Proposed Rule (Part II and III) occurs there will be a significant impact to ranching operations in the county and it will result in a dry-up of the majority of irrigated hay meadows in the basin, which will have a negative impact on the quality of riparian habitat critical to Sage-grouse chick survival.

**Tourism Economy.** Presently, the county's tourism employment sector accounts for about 35 percent of the labor force, while agribusiness accounts for about 3.6 percent of the local employment jobs. However, there is a direct relationship between tourism and ranching. In a report from Colorado State University, Department of Agricultural and Resource Economics (August 2004-EDR 04-10), the value that tourists place on agricultural open spaces on private lands was assessed. The report provided the following statements:

*Cattle ranches are managed by ranchers in order to generate economic returns to beef cattle production. However, this low intensity land use of the Gunnison River Valley may simultaneously contribute to water quality, fishing quality, flood control, wildlife habitat, floral and faunal diversity, and the rural lifestyle in the county. Ranchers may be thought to jointly produce these important goods and services along with beef, but they do not typically receive compensation or other direct incentives to continue or nurture their provision. Their land is becoming more valuable as Gunnison County is becoming more known as a vacation destination for world-class skiing, hiking, camping, and other recreational activities. Gunnison County currently appeals to a visitor who is not interested in crowds and ultra-modern, high-rise resorts of the Interstate 70 corridor and who is more interested in experiencing natural beauty, world-class skiing, and rural charm.*

If the decision to list the GUSG as an endangered species occurs, it will result in a reduction of agriculture lands and dry-up of irrigated hay meadows, and this will have a direct effect on the tourism industry.

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<sup>3</sup> Ted C. Jones, Brittany A. Burnam, Clinton H. Harrington and Roger J. Pelton, "Impact of Habitat Protection on Property Values," *Tierra Grande*, Vol. 2, No. 3, October 1993, pages 942-950.

Data from the Western Governors' Association finds that recreational activity on public lands is the largest economic contributor to western states. The Colorado Department of Parks and Wildlife study has determined that hunting and fishing contributes over \$1.8 billion to the Colorado economy.

**Effects of Determination – Economic Impacts.** As noted in the Proposed Rule (Part III, pg. 2559), the FWS will defer certain determinations regarding the *Regulatory Flexibility Act*; *Energy Supply, Distribution or Uses Executive Order 13211*; *Unfunded Mandate Reform Act*; and *Small Business Regulatory Act* until after the economic impact analysis for the proposed Rules (Part II and III) has been completed. This direction places a specific burden on local government and citizens to provide input that would be critical in the determination process. It is imperative that the FWS provide the citizens of the United States an opportunity to comment on the negative economic impacts that would result if a determination to list the species as threatened or endangered is made by the FWS.

## CONCLUSIONS

The record of comments submitted for the Proposed Rules (Parts II and III) demonstrate that the threat and determination factors cited in the Proposed Rule (Parts II and III) and used as the basis for the FWS action are, in several instances, fundamentally flawed. Specifically, the data and assessment methods used for the determination of Critical Habitat are flawed. Furthermore, the estimate of Historic Habitat is overstated and this skews the determination of Critical Habitat. Based on these facts, the best available scientific and commercial data was not used to designate Critical Habitat, and on the fact that the threat and determination factors cited in Proposed Rule (Part II) are flawed, there is no existing basis for the FWS to determine the GUSG as either Threatened or Endangered.

The City of Gunnison is discouraged by the fact that the FWS has chosen to defer certain determinations regarding the *Regulatory Flexibility Act*; *Energy Supply, Distribution or Uses Executive Order 13211*; *Unfunded Mandate Reform Act*; and *Small Business Regulatory Act* until after the economic impact analysis for the proposed Rules (Part II and III) has been completed. This deferral places a significant burden on local governments and Citizens of the United States to provide input that will be valuable for a final determination by the FWS. It is anticipated that local governments and Citizens of the United States will be deprived of adequate due process because the amount of time allowed for response to these deferrals will be very limited.

In conclusion, the public record for the Proposed Rule (Part II and III), unequivocally demonstrate that listing of the Gunnison Sage-grouse is not warranted. Furthermore, the City believes that the actions by the FWS are in response to legal proceedings brought forth by the Wild Earth Guardians (et al), who have a documented agenda to eliminate agriculture use and resource extraction on public lands in the Western United States. The City of Gunnison believes that actions by the Wild Earth Guardians is undermining the true intent and meaning of the *Endangered Species Act* and their actions are a detriment to the well-being of the United States of America. The Gunnison City Council is confident that if the FWS thoroughly analyzes the public record, and the best available scientific and commercial data, a “not warranted” listing decision will be the only conclusion that can be made, and it will be legally justified.